

HOUSE BILL 477

D3

2lr0398

By: **Delegates Waldstreicher and Dumais**
Introduced and read first time: February 2, 2012
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Uniform Collaborative Law Act**

3 FOR the purpose of enacting the Maryland Uniform Collaborative Law Act;
4 establishing requirements for a collaborative law participation agreement and
5 the collaborative law process; specifying the relationship between the
6 collaborative law process and the judicial process; establishing standards
7 applicable to collaborative lawyers; establishing standards for the disclosure of
8 information during the collaborative law process; authorizing parties to agree
9 on the scope of confidentiality of collaborative law communications; establishing
10 an evidentiary privilege for certain collaborative law communications and
11 providing for certain waivers of and limited exceptions to the evidentiary
12 privilege; authorizing a court or certain other body to enforce agreements that
13 result from a collaborative process and to apply certain provisions of this Act;
14 defining certain terms; making the provisions of this Act severable; providing
15 for the construction and application of this Act; and generally relating to the
16 Maryland Uniform Collaborative Law Act.

17 BY adding to

18 Article – Courts and Judicial Proceedings
19 Section 3–1801 through 3–1821 to be under the new subtitle “Subtitle 18.
20 Maryland Uniform Collaborative Law Act”
21 Annotated Code of Maryland
22 (2006 Replacement Volume and 2011 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
24 MARYLAND, That the Laws of Maryland read as follows:

25 **Article – Courts and Judicial Proceedings**

26 **SUBTITLE 18. MARYLAND UNIFORM COLLABORATIVE LAW ACT.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **3-1801. DEFINITIONS.**

2 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
3 INDICATED.

4 (B) "COLLABORATIVE LAW COMMUNICATION" MEANS A STATEMENT,
5 WHETHER ORAL OR IN A RECORD, OR VERBAL OR NONVERBAL, THAT:

6 (1) IS MADE TO CONDUCT, PARTICIPATE IN, CONTINUE, OR
7 RECONVENE A COLLABORATIVE LAW PROCESS; AND

8 (2) OCCURS AFTER THE PARTIES SIGN A COLLABORATIVE LAW
9 PARTICIPATION AGREEMENT AND BEFORE THE COLLABORATIVE LAW PROCESS
10 IS CONCLUDED.

11 (C) "COLLABORATIVE LAW PARTICIPATION AGREEMENT" MEANS AN
12 AGREEMENT BY PERSONS TO PARTICIPATE IN A COLLABORATIVE LAW PROCESS.

13 (D) "COLLABORATIVE LAW PROCESS" MEANS A PROCEDURE INTENDED
14 TO RESOLVE A COLLABORATIVE MATTER WITHOUT INTERVENTION BY A
15 TRIBUNAL IN WHICH PERSONS:

16 (1) SIGN A COLLABORATIVE LAW PARTICIPATION AGREEMENT;
17 AND

18 (2) ARE REPRESENTED BY COLLABORATIVE LAWYERS.

19 (E) "COLLABORATIVE LAWYER" MEANS A LAWYER WHO REPRESENTS A
20 PARTY IN A COLLABORATIVE LAW PROCESS.

21 (F) (1) "COLLABORATIVE MATTER" MEANS A DISPUTE, A
22 TRANSACTION, A CLAIM, A PROBLEM, OR AN ISSUE FOR RESOLUTION
23 DESCRIBED IN A COLLABORATIVE LAW PARTICIPATION AGREEMENT.

24 (2) "COLLABORATIVE MATTER" INCLUDES A DISPUTE, A CLAIM,
25 AND AN ISSUE IN A PROCEEDING.

26 (G) "LAW FIRM" MEANS:

27 (1) LAWYERS WHO PRACTICE LAW TOGETHER IN A PARTNERSHIP,
28 A PROFESSIONAL CORPORATION, A SOLE PROPRIETORSHIP, A LIMITED
29 LIABILITY COMPANY, OR AN ASSOCIATION; AND

1 **(2) LAWYERS EMPLOYED IN A LEGAL SERVICES ORGANIZATION,**
2 **OR THE LEGAL DEPARTMENT OF A CORPORATION OR OTHER ORGANIZATION, OR**
3 **THE LEGAL DEPARTMENT OF A GOVERNMENT OR GOVERNMENTAL**
4 **SUBDIVISION, AGENCY, OR INSTRUMENTALITY.**

5 **(H) “NONPARTY PARTICIPANT” MEANS A PERSON OTHER THAN A PARTY**
6 **AND THE PARTY’S COLLABORATIVE LAWYER THAT PARTICIPATES IN A**
7 **COLLABORATIVE LAW PROCESS.**

8 **(I) “PARTY” MEANS A PERSON THAT SIGNS A COLLABORATIVE LAW**
9 **PARTICIPATION AGREEMENT AND WHOSE CONSENT IS NECESSARY TO RESOLVE**
10 **A COLLABORATIVE MATTER.**

11 **(J) “PERSON” MEANS AN INDIVIDUAL, A CORPORATION, A BUSINESS**
12 **TRUST, AN ESTATE, A TRUST, A PARTNERSHIP, A LIMITED LIABILITY COMPANY,**
13 **AN ASSOCIATION, A JOINT VENTURE, A PUBLIC CORPORATION, A GOVERNMENT**
14 **OR GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY, OR ANY**
15 **OTHER LEGAL OR COMMERCIAL ENTITY.**

16 **(K) “PERSON ELIGIBLE FOR RELIEF” INCLUDES:**

17 **(1) THE CURRENT OR FORMER SPOUSE OF A RESPONDENT;**

18 **(2) A COHABITANT OF A RESPONDENT;**

19 **(3) A PERSON RELATED TO A RESPONDENT BY BLOOD,**
20 **MARRIAGE, OR ADOPTION;**

21 **(4) A PARENT, STEPPARENT, CHILD, OR STEPCHILD OF A**
22 **RESPONDENT OR PERSON ELIGIBLE FOR RELIEF WHO RESIDES OR RESIDED**
23 **WITH THE RESPONDENT OR PERSON ELIGIBLE FOR RELIEF FOR AT LEAST 90**
24 **DAYS WITHIN 1 YEAR BEFORE THE FILING OF A PETITION FOR RELIEF UNDER**
25 **TITLE 4, SUBTITLE 5 OF THE FAMILY LAW ARTICLE;**

26 **(5) A VULNERABLE ADULT; AND**

27 **(6) A PERSON WHO HAS A CHILD IN COMMON WITH THE**
28 **RESPONDENT.**

29 **(L) “PROCEEDING” MEANS:**

1 **(1) A JUDICIAL, AN ADMINISTRATIVE, AN ARBITRAL, OR OTHER**
2 **ADJUDICATIVE PROCESS BEFORE A TRIBUNAL, INCLUDING RELATED**
3 **PREHEARING AND POSTHEARING MOTIONS, CONFERENCES, AND DISCOVERY; OR**

4 **(2) A LEGISLATIVE HEARING OR SIMILAR PROCESS.**

5 **(M) “PROSPECTIVE PARTY” MEANS A PERSON THAT DISCUSSES WITH A**
6 **PROSPECTIVE COLLABORATIVE LAWYER THE POSSIBILITY OF SIGNING A**
7 **COLLABORATIVE LAW PARTICIPATION AGREEMENT.**

8 **(N) “RECORD” MEANS INFORMATION THAT IS INSCRIBED ON A**
9 **TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM**
10 **AND IS RETRIEVABLE IN PERCEIVABLE FORM.**

11 **(O) “RELATED TO A COLLABORATIVE MATTER” MEANS INVOLVING THE**
12 **SAME PARTIES, TRANSACTION OR OCCURRENCE, NUCLEUS OF OPERATIVE FACT,**
13 **DISPUTE, CLAIM, OR ISSUE AS THE COLLABORATIVE MATTER.**

14 **(P) “RESPONDENT” MEANS THE PERSON ALLEGED, IN A PETITION FOR**
15 **RELIEF FILED UNDER TITLE 4, SUBTITLE 5 OF THE FAMILY LAW ARTICLE, TO**
16 **HAVE COMMITTED AN ACT OF ABUSE.**

17 **(Q) “SIGN” MEANS, WITH PRESENT INTENT TO AUTHENTICATE OR**
18 **ADOPT A RECORD TO:**

19 **(1) EXECUTE OR ADOPT A TANGIBLE SYMBOL; OR**

20 **(2) ATTACH TO OR LOGICALLY ASSOCIATE WITH THE RECORD AN**
21 **ELECTRONIC SYMBOL, SOUND, OR PROCESS.**

22 **(R) “TRIBUNAL” MEANS:**

23 **(1) A COURT, AN ARBITRATOR, AN ADMINISTRATIVE AGENCY, OR**
24 **OTHER BODY ACTING IN AN ADJUDICATIVE CAPACITY THAT, AFTER**
25 **PRESENTATION OF EVIDENCE OR LEGAL ARGUMENT, HAS JURISDICTION TO**
26 **RENDER A DECISION AFFECTING A PARTY’S INTERESTS IN A MATTER; OR**

27 **(2) A LEGISLATIVE BODY CONDUCTING A HEARING OR SIMILAR**
28 **PROCESS.**

29 **3-1802. COLLABORATIVE LAW PARTICIPATION AGREEMENT; REQUIREMENTS.**

30 **(A) A COLLABORATIVE LAW PARTICIPATION AGREEMENT SHALL:**

- 1 **(1) BE IN A RECORD;**
- 2 **(2) BE SIGNED BY THE PARTIES;**
- 3 **(3) STATE THE PARTIES' INTENTION TO RESOLVE A**
4 **COLLABORATIVE MATTER THROUGH A COLLABORATIVE LAW PROCESS UNDER**
5 **THIS SUBTITLE;**
- 6 **(4) DESCRIBE THE NATURE AND SCOPE OF THE MATTER;**
- 7 **(5) IDENTIFY THE COLLABORATIVE LAWYER WHO REPRESENTS**
8 **EACH PARTY IN THE PROCESS; AND**
- 9 **(6) CONTAIN A STATEMENT BY EACH COLLABORATIVE LAWYER**
10 **CONFIRMING THE LAWYER'S REPRESENTATION OF A PARTY IN THE**
11 **COLLABORATIVE LAW PROCESS.**

12 **(B) THE PARTIES MAY AGREE TO INCLUDE IN A COLLABORATIVE LAW**
13 **PARTICIPATION AGREEMENT ADDITIONAL PROVISIONS CONSISTENT WITH THIS**
14 **SUBTITLE.**

15 **3-1803. BEGINNING AND CONCLUDING A COLLABORATIVE LAW PROCESS.**

16 **(A) A COLLABORATIVE LAW PROCESS BEGINS WHEN THE PARTIES SIGN**
17 **A COLLABORATIVE LAW PARTICIPATION AGREEMENT.**

18 **(B) A TRIBUNAL MAY NOT ORDER A PARTY TO PARTICIPATE IN A**
19 **COLLABORATIVE LAW PROCESS OVER THAT PARTY'S OBJECTION.**

20 **(C) A COLLABORATIVE LAW PROCESS IS CONCLUDED BY:**

21 **(1) A RESOLUTION OF A COLLABORATIVE MATTER AS EVIDENCED**
22 **BY A SIGNED RECORD;**

23 **(2) A RESOLUTION OF A PART OF THE COLLABORATIVE MATTER,**
24 **EVIDENCED BY A SIGNED RECORD, IN WHICH THE PARTIES AGREE THAT THE**
25 **REMAINING PARTS OF THE MATTER WILL NOT BE RESOLVED IN THE PROCESS;**
26 **OR**

27 **(3) A TERMINATION OF THE PROCESS.**

28 **(D) A COLLABORATIVE LAW PROCESS TERMINATES:**

1 **(1) WHEN A PARTY GIVES NOTICE TO OTHER PARTIES IN A**
2 **RECORD THAT THE PROCESS IS ENDED;**

3 **(2) WHEN A PARTY:**

4 **(I) BEGINS A PROCEEDING RELATED TO A COLLABORATIVE**
5 **MATTER WITHOUT THE AGREEMENT OF ALL PARTIES; OR**

6 **(II) IN A PENDING PROCEEDING RELATED TO THE MATTER:**

7 **1. INITIATES A PLEADING, A MOTION, AN ORDER TO**
8 **SHOW CAUSE, OR A REQUEST FOR A CONFERENCE WITH THE TRIBUNAL;**

9 **2. REQUESTS THAT THE PROCEEDING BE PUT ON**
10 **THE TRIBUNAL'S CALENDAR; OR**

11 **3. TAKES SIMILAR ACTION REQUIRING NOTICE TO**
12 **BE SENT TO THE PARTIES; OR**

13 **(3) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (E) OF**
14 **THIS SECTION, WHEN A PARTY DISCHARGES A COLLABORATIVE LAWYER OR A**
15 **COLLABORATIVE LAWYER WITHDRAWS FROM FURTHER REPRESENTATION OF A**
16 **PARTY.**

17 **(E) A PARTY'S COLLABORATIVE LAWYER SHALL GIVE PROMPT NOTICE**
18 **TO ALL OTHER PARTIES IN A RECORD OF A DISCHARGE OR WITHDRAWAL.**

19 **(F) A PARTY MAY TERMINATE A COLLABORATIVE LAW PROCESS WITH**
20 **OR WITHOUT CAUSE.**

21 **(G) NOTWITHSTANDING THE DISCHARGE OR WITHDRAWAL OF A**
22 **COLLABORATIVE LAWYER, A COLLABORATIVE LAW PROCESS CONTINUES IF,**
23 **WITHIN 30 DAYS AFTER THE DATE THAT THE NOTICE OF DISCHARGE OR**
24 **WITHDRAWAL OF A COLLABORATIVE LAWYER REQUIRED BY SUBSECTION (E) OF**
25 **THIS SECTION IS SENT TO THE PARTIES:**

26 **(1) THE UNREPRESENTED PARTY ENGAGES A SUCCESSOR**
27 **COLLABORATIVE LAWYER; AND**

28 **(2) IN A SIGNED RECORD:**

1 **(I) THE PARTIES CONSENT TO CONTINUE THE PROCESS BY**
2 **REAFFIRMING THE COLLABORATIVE LAW PARTICIPATION AGREEMENT;**

3 **(II) THE AGREEMENT IS AMENDED TO IDENTIFY THE**
4 **SUCCESSOR COLLABORATIVE LAWYER; AND**

5 **(III) THE SUCCESSOR COLLABORATIVE LAWYER CONFIRMS**
6 **THE LAWYER'S REPRESENTATION OF A PARTY IN THE COLLABORATIVE**
7 **PROCESS.**

8 **(H) A COLLABORATIVE LAW PROCESS DOES NOT CONCLUDE IF, WITH**
9 **THE CONSENT OF THE PARTIES, A PARTY REQUESTS A TRIBUNAL TO APPROVE A**
10 **RESOLUTION OF THE COLLABORATIVE MATTER OR ANY PART OF THE**
11 **COLLABORATIVE MATTER AS EVIDENCED BY A SIGNED RECORD.**

12 **(I) A COLLABORATIVE LAW PARTICIPATION AGREEMENT MAY PROVIDE**
13 **ADDITIONAL METHODS OF CONCLUDING A COLLABORATIVE LAW PROCESS.**

14 **3-1804. PROCEEDINGS PENDING BEFORE TRIBUNAL; STATUS REPORT.**

15 **(A) (1) PERSONS IN A PROCEEDING PENDING BEFORE A TRIBUNAL**
16 **MAY SIGN A COLLABORATIVE LAW PARTICIPATION AGREEMENT TO SEEK TO**
17 **RESOLVE A COLLABORATIVE MATTER RELATED TO THE PROCEEDING.**

18 **(2) THE PARTIES SHALL FILE PROMPTLY WITH THE TRIBUNAL A**
19 **NOTICE OF THE AGREEMENT AFTER IT IS SIGNED.**

20 **(3) SUBJECT TO SUBSECTION (C) OF THIS SECTION AND §§**
21 **3-1805 AND 3-1806 OF THIS SUBTITLE, THE FILING OPERATES AS A STAY OF**
22 **THE PROCEEDING.**

23 **(B) (1) PARTIES SHALL FILE PROMPTLY WITH THE TRIBUNAL NOTICE**
24 **IN A RECORD WHEN A COLLABORATIVE LAW PROCESS CONCLUDES.**

25 **(2) (I) THE STAY OF THE PROCEEDING UNDER SUBSECTION (A)**
26 **OF THIS SECTION IS LIFTED WHEN THE NOTICE IS FILED.**

27 **(II) THE NOTICE MAY NOT SPECIFY ANY REASON FOR**
28 **TERMINATION OF THE PROCESS.**

29 **(C) (1) A TRIBUNAL IN WHICH A PROCEEDING IS STAYED UNDER**
30 **SUBSECTION (A) OF THIS SECTION MAY REQUIRE PARTIES AND COLLABORATIVE**

1 LAWYERS TO PROVIDE A STATUS REPORT ON THE COLLABORATIVE LAW
2 PROCESS AND THE PROCEEDING.

3 (2) (I) A STATUS REPORT MAY INCLUDE ONLY INFORMATION
4 ON WHETHER THE PROCESS IS ONGOING OR CONCLUDED.

5 (II) A STATUS REPORT MAY NOT INCLUDE A REPORT, AN
6 ASSESSMENT, AN EVALUATION, A RECOMMENDATION, A FINDING, OR OTHER
7 COMMUNICATION REGARDING A COLLABORATIVE LAW PROCESS OR
8 COLLABORATIVE LAW MATTER.

9 (D) A TRIBUNAL MAY NOT CONSIDER A COMMUNICATION MADE IN
10 VIOLATION OF SUBSECTION (C) OF THIS SECTION.

11 **3-1805. EMERGENCY ORDER.**

12 DURING A COLLABORATIVE LAW PROCESS, A TRIBUNAL MAY ISSUE
13 EMERGENCY ORDERS TO PROTECT THE HEALTH, SAFETY, WELFARE, OR
14 INTEREST OF A PERSON ELIGIBLE FOR RELIEF.

15 **3-1806. APPROVAL OF AGREEMENT BY TRIBUNAL.**

16 A TRIBUNAL MAY APPROVE AN AGREEMENT RESULTING FROM A
17 COLLABORATIVE LAW PROCESS.

18 **3-1807. DISQUALIFICATION OF COLLABORATIVE LAWYER AND LAWYERS IN
19 ASSOCIATED LAW FIRM.**

20 (A) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (C) OF THIS
21 SECTION, A COLLABORATIVE LAWYER IS DISQUALIFIED FROM APPEARING
22 BEFORE A TRIBUNAL TO REPRESENT A PARTY IN A PROCEEDING RELATED TO
23 THE COLLABORATIVE MATTER.

24 (B) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (C) OF THIS
25 SECTION AND §§ 3-1808 AND 3-1809 OF THIS SUBTITLE, A LAWYER IN A LAW
26 FIRM WITH WHICH THE COLLABORATIVE LAWYER IS ASSOCIATED IS
27 DISQUALIFIED FROM APPEARING BEFORE A TRIBUNAL TO REPRESENT A PARTY
28 IN A PROCEEDING RELATED TO THE COLLABORATIVE MATTER IF THE
29 COLLABORATIVE LAWYER IS DISQUALIFIED FROM DOING SO UNDER
30 SUBSECTION (A) OF THIS SECTION.

31 (C) A COLLABORATIVE LAWYER OR A LAWYER IN A LAW FIRM WITH
32 WHICH THE COLLABORATIVE LAWYER IS ASSOCIATED MAY REPRESENT A PARTY:

1 (1) TO ASK A TRIBUNAL TO APPROVE AN AGREEMENT RESULTING
2 FROM THE COLLABORATIVE LAW PROCESS; OR

3 (2) TO SEEK OR DEFEND AN EMERGENCY ORDER TO PROTECT
4 THE HEALTH, SAFETY, WELFARE, OR INTEREST OF A PERSON ELIGIBLE FOR
5 RELIEF IF A SUCCESSOR LAWYER IS NOT IMMEDIATELY AVAILABLE TO
6 REPRESENT THAT PERSON.

7 (D) IN AN EMERGENCY ORDER PROCEEDING UNDER SUBSECTION (C)(2)
8 OF THIS SECTION, A COLLABORATIVE LAWYER OR A LAWYER IN A LAW FIRM
9 WITH WHICH THE COLLABORATIVE LAWYER IS ASSOCIATED MAY REPRESENT A
10 PARTY ONLY UNTIL:

11 (1) THE PERSON ELIGIBLE FOR RELIEF IS REPRESENTED BY A
12 SUCCESSOR LAWYER; OR

13 (2) REASONABLE MEASURES ARE TAKEN TO PROTECT THE
14 HEALTH, SAFETY, WELFARE, OR INTEREST OF THAT PERSON.

15 **3-1808. LOW INCOME PARTIES.**

16 (A) THE DISQUALIFICATION UNDER § 3-1807(A) OF THIS SUBTITLE
17 APPLIES TO A COLLABORATIVE LAWYER REPRESENTING A PARTY WITH OR
18 WITHOUT FEE.

19 (B) AFTER A COLLABORATIVE LAW PROCESS CONCLUDES, ANOTHER
20 LAWYER IN A LAW FIRM WITH WHICH A COLLABORATIVE LAWYER DISQUALIFIED
21 UNDER § 3-1807(A) OF THIS SUBTITLE IS ASSOCIATED MAY REPRESENT A PARTY
22 WITHOUT FEE IN THE COLLABORATIVE MATTER OR A MATTER RELATED TO THE
23 COLLABORATIVE MATTER IF:

24 (1) THE PARTY HAS AN ANNUAL INCOME THAT QUALIFIES THE
25 PARTY FOR FREE LEGAL REPRESENTATION UNDER THE CRITERIA ESTABLISHED
26 BY THE LAW FIRM FOR FREE LEGAL REPRESENTATION;

27 (2) THE COLLABORATIVE LAW PARTICIPATION AGREEMENT SO
28 PROVIDES; AND

29 (3) THE COLLABORATIVE LAWYER IS ISOLATED FROM ANY
30 PARTICIPATION IN THE COLLABORATIVE MATTER OR A MATTER RELATED TO
31 THE COLLABORATIVE MATTER THROUGH PROCEDURES WITHIN THE LAW FIRM
32 THAT ARE REASONABLY CALCULATED TO ISOLATE THE COLLABORATIVE

1 LAWYER FROM ANY PARTICIPATION IN THE COLLABORATIVE MATTER AND A
2 MATTER RELATED TO THE COLLABORATIVE MATTER.

3 **3-1809. GOVERNMENTAL ENTITY AS PARTY.**

4 (A) THE DISQUALIFICATION UNDER § 3-1807(A) OF THIS SUBTITLE
5 APPLIES TO A COLLABORATIVE LAWYER REPRESENTING A PARTY THAT IS A
6 GOVERNMENT OR GOVERNMENTAL SUBDIVISION, AGENCY, OR
7 INSTRUMENTALITY.

8 (B) AFTER A COLLABORATIVE LAW PROCESS CONCLUDES, ANOTHER
9 LAWYER IN A LAW FIRM WITH WHICH THE COLLABORATIVE LAWYER IS
10 ASSOCIATED MAY REPRESENT A GOVERNMENT OR GOVERNMENTAL
11 SUBDIVISION, AGENCY, OR INSTRUMENTALITY IN THE COLLABORATIVE MATTER
12 OR A MATTER RELATED TO THE COLLABORATIVE MATTER IF:

13 (1) THE COLLABORATIVE LAW PARTICIPATION AGREEMENT SO
14 PROVIDES; AND

15 (2) THE COLLABORATIVE LAWYER IS ISOLATED FROM ANY
16 PARTICIPATION IN THE COLLABORATIVE MATTER OR A MATTER RELATED TO
17 THE COLLABORATIVE MATTER THROUGH PROCEDURES WITHIN THE LAW FIRM
18 WHICH ARE REASONABLY CALCULATED TO ISOLATE THE COLLABORATIVE
19 LAWYER FROM SUCH PARTICIPATION.

20 **3-1810. DISCLOSURE OF INFORMATION.**

21 (A) EXCEPT AS PROVIDED BY LAW OTHER THAN THIS SUBTITLE,
22 DURING THE COLLABORATIVE LAW PROCESS A PARTY SHALL:

23 (1) ON THE REQUEST OF ANOTHER PARTY, MAKE TIMELY, FULL,
24 CANDID, AND INFORMAL DISCLOSURE OF INFORMATION RELATED TO THE
25 COLLABORATIVE MATTER WITHOUT FORMAL DISCOVERY; AND

26 (2) UPDATE PROMPTLY PREVIOUSLY DISCLOSED INFORMATION
27 THAT HAS MATERIALLY CHANGED.

28 (B) PARTIES MAY DEFINE THE SCOPE OF DISCLOSURE DURING THE
29 COLLABORATIVE LAW PROCESS.

30 **3-1811. STANDARDS OF PROFESSIONAL RESPONSIBILITY AND REPORTING NOT**
31 **AFFECTED.**

1 **THIS SUBTITLE DOES NOT AFFECT:**

2 **(1) THE PROFESSIONAL RESPONSIBILITY OBLIGATIONS AND**
3 **STANDARDS APPLICABLE TO A LAWYER OR OTHER LICENSED PROFESSIONAL;**
4 **OR**

5 **(2) THE OBLIGATION OF A PERSON TO REPORT ABUSE OR**
6 **NEGLECT, ABANDONMENT, OR EXPLOITATION OF A CHILD OR AN ADULT UNDER**
7 **STATE LAW.**

8 **3-1812. APPROPRIATENESS OF COLLABORATIVE LAW PROCESS.**

9 **BEFORE A PROSPECTIVE PARTY SIGNS A COLLABORATIVE LAW**
10 **PARTICIPATION AGREEMENT, A PROSPECTIVE COLLABORATIVE LAWYER SHALL:**

11 **(1) ASSESS WITH THE PROSPECTIVE PARTY FACTORS THE**
12 **LAWYER REASONABLY BELIEVES RELATE TO WHETHER A COLLABORATIVE LAW**
13 **PROCESS IS APPROPRIATE FOR THE PROSPECTIVE PARTY'S MATTER;**

14 **(2) PROVIDE THE PROSPECTIVE PARTY WITH INFORMATION THAT**
15 **THE LAWYER REASONABLY BELIEVES IS SUFFICIENT FOR THE PARTY TO MAKE**
16 **AN INFORMED DECISION ABOUT THE MATERIAL BENEFITS AND RISKS OF A**
17 **COLLABORATIVE LAW PROCESS AS COMPARED TO THE MATERIAL BENEFITS AND**
18 **RISKS OF OTHER REASONABLY AVAILABLE ALTERNATIVES FOR RESOLVING THE**
19 **PROPOSED COLLABORATIVE MATTER, SUCH AS LITIGATION, MEDIATION,**
20 **ARBITRATION, OR EXPERT EVALUATION; AND**

21 **(3) ADVISE THE PROSPECTIVE PARTY THAT:**

22 **(I) IF A PARTY INITIATES A PROCEEDING OR SEEKS**
23 **TRIBUNAL INTERVENTION IN A PENDING PROCEEDING RELATED TO THE**
24 **COLLABORATIVE MATTER AFTER SIGNING A COLLABORATIVE LAW**
25 **PARTICIPATION AGREEMENT, THE COLLABORATIVE LAW PROCESS TERMINATES;**

26 **(II) PARTICIPATION IN A COLLABORATIVE LAW PROCESS IS**
27 **VOLUNTARY AND ANY PARTY HAS THE RIGHT TO TERMINATE UNILATERALLY A**
28 **COLLABORATIVE LAW PROCESS WITH OR WITHOUT CAUSE; AND**

29 **(III) THE COLLABORATIVE LAWYER AND ANY LAWYER IN A**
30 **LAW FIRM WITH WHICH THE COLLABORATIVE LAWYER IS ASSOCIATED MAY NOT**
31 **APPEAR BEFORE A TRIBUNAL TO REPRESENT A PARTY IN A PROCEEDING**
32 **RELATED TO THE COLLABORATIVE MATTER, EXCEPT AS AUTHORIZED UNDER §**
33 **3-1807(C), § 3-1808(B), OR § 3-1809(B) OF THIS SUBTITLE.**

1 **3-1813. COERCIVE OR VIOLENT RELATIONSHIP.**

2 (A) BEFORE A PROSPECTIVE PARTY SIGNS A COLLABORATIVE LAW
3 PARTICIPATION AGREEMENT, A PROSPECTIVE COLLABORATIVE LAWYER SHALL
4 MAKE REASONABLE INQUIRY AS TO WHETHER THE PROSPECTIVE PARTY HAS A
5 HISTORY OF A COERCIVE OR VIOLENT RELATIONSHIP WITH ANOTHER
6 PROSPECTIVE PARTY.

7 (B) THROUGHOUT A COLLABORATIVE LAW PROCESS, A COLLABORATIVE
8 LAWYER REASONABLY AND CONTINUOUSLY SHALL ASSESS WHETHER THE
9 PARTY THE COLLABORATIVE LAWYER REPRESENTS HAS A HISTORY OF A
10 COERCIVE OR VIOLENT RELATIONSHIP WITH ANOTHER PARTY.

11 (C) IF A COLLABORATIVE LAWYER REASONABLY BELIEVES THAT THE
12 PARTY THE LAWYER REPRESENTS OR THE PROSPECTIVE PARTY WHO CONSULTS
13 THE LAWYER HAS A HISTORY OF A COERCIVE OR VIOLENT RELATIONSHIP WITH
14 ANOTHER PARTY OR PROSPECTIVE PARTY, THE LAWYER MAY NOT BEGIN OR
15 CONTINUE A COLLABORATIVE LAW PROCESS UNLESS:

16 (1) THE PARTY OR THE PROSPECTIVE PARTY REQUESTS
17 BEGINNING OR CONTINUING A COLLABORATIVE LAW PROCESS; AND

18 (2) THE COLLABORATIVE LAWYER REASONABLY BELIEVES THAT
19 THE SAFETY OF THE PARTY OR PROSPECTIVE PARTY CAN BE PROTECTED
20 ADEQUATELY DURING A COLLABORATIVE LAW PROCESS.

21 **3-1814. CONFIDENTIALITY OF COLLABORATIVE LAW COMMUNICATION.**

22 A COLLABORATIVE LAW COMMUNICATION IS CONFIDENTIAL TO THE
23 EXTENT AGREED BY THE PARTIES IN A SIGNED RECORD OR AS PROVIDED BY
24 STATE LAW OTHER THAN IN THIS SUBTITLE.

25 **3-1815. PRIVILEGE AGAINST DISCLOSURE FOR COLLABORATIVE LAW**
26 **COMMUNICATION; ADMISSIBILITY; DISCOVERY.**

27 (A) SUBJECT TO §§ 3-1817 AND 3-1818 OF THIS SUBTITLE, A
28 COLLABORATIVE LAW COMMUNICATION IS PRIVILEGED UNDER SUBSECTION (B)
29 OF THIS SECTION, IS NOT SUBJECT TO DISCOVERY, AND IS NOT ADMISSIBLE IN
30 EVIDENCE.

31 (B) IN A PROCEEDING, THE FOLLOWING PRIVILEGES APPLY:

1 (1) A PARTY MAY REFUSE TO DISCLOSE, AND MAY PREVENT ANY
2 OTHER PERSON FROM DISCLOSING, A COLLABORATIVE LAW COMMUNICATION;
3 AND

4 (2) A NONPARTY PARTICIPANT MAY REFUSE TO DISCLOSE, AND
5 MAY PREVENT ANY OTHER PERSON FROM DISCLOSING, A COLLABORATIVE LAW
6 COMMUNICATION OF THE NONPARTY PARTICIPANT.

7 (C) EVIDENCE OR INFORMATION THAT IS OTHERWISE ADMISSIBLE OR
8 SUBJECT TO DISCOVERY DOES NOT BECOME INADMISSIBLE OR PROTECTED
9 FROM DISCOVERY SOLELY BECAUSE OF ITS DISCLOSURE OR USE IN A
10 COLLABORATIVE LAW PROCESS.

11 **3-1816. WAIVER AND PRECLUSION OF PRIVILEGE.**

12 (A) A PRIVILEGE UNDER § 3-1815 OF THIS SUBTITLE MAY BE WAIVED IN
13 A RECORD OR ORALLY DURING A PROCEEDING IF IT IS EXPRESSLY WAIVED BY
14 EACH PARTY AND, IN THE CASE OF THE PRIVILEGE OF A NONPARTY
15 PARTICIPANT, THE PRIVILEGE IS ALSO EXPRESSLY WAIVED BY THE NONPARTY
16 PARTICIPANT.

17 (B) A PERSON THAT MAKES A DISCLOSURE OR REPRESENTATION
18 ABOUT A COLLABORATIVE LAW COMMUNICATION THAT PREJUDICES ANOTHER
19 PERSON IN A PROCEEDING MAY NOT ASSERT A PRIVILEGE UNDER § 3-1815 OF
20 THIS SUBTITLE, BUT THIS PRECLUSION APPLIES ONLY TO THE EXTENT
21 NECESSARY FOR THE PERSON PREJUDICED TO RESPOND TO THE DISCLOSURE
22 OR REPRESENTATION.

23 **3-1817. LIMITS OF PRIVILEGE.**

24 (A) THERE IS NO PRIVILEGE UNDER § 3-1815 OF THIS SUBTITLE FOR A
25 COLLABORATIVE LAW COMMUNICATION THAT IS:

26 (1) AVAILABLE TO THE PUBLIC UNDER TITLE 10, SUBTITLE 6 OF
27 THE STATE GOVERNMENT ARTICLE OR MADE DURING A SESSION OF A
28 COLLABORATIVE LAW PROCESS THAT IS OPEN, OR IS REQUIRED BY LAW TO BE
29 OPEN, TO THE PUBLIC;

30 (2) A THREAT OR STATEMENT OF A PLAN TO INFLICT BODILY
31 INJURY OR COMMIT A CRIME OF VIOLENCE;

1 **(3) INTENTIONALLY USED TO PLAN A CRIME, COMMIT OR**
2 **ATTEMPT TO COMMIT A CRIME, OR CONCEAL AN ONGOING CRIME OR ONGOING**
3 **CRIMINAL ACTIVITY; OR**

4 **(4) IN AN AGREEMENT RESULTING FROM THE COLLABORATIVE**
5 **LAW PROCESS, EVIDENCED BY A RECORD SIGNED BY ALL PARTIES TO THE**
6 **AGREEMENT.**

7 **(B) THE PRIVILEGES UNDER § 3-1815 OF THIS SUBTITLE FOR A**
8 **COLLABORATIVE LAW COMMUNICATION DO NOT APPLY TO THE EXTENT THAT A**
9 **COMMUNICATION IS SOUGHT OR OFFERED TO PROVE OR DISPROVE:**

10 **(1) A CLAIM OR COMPLAINT OF PROFESSIONAL MISCONDUCT OR**
11 **MALPRACTICE ARISING FROM OR RELATED TO A COLLABORATIVE LAW**
12 **PROCESS; OR**

13 **(2) ABUSE, NEGLECT, ABANDONMENT, OR EXPLOITATION OF A**
14 **CHILD OR AN ADULT, UNLESS THE DEPARTMENT OF SOCIAL SERVICES FOR THE**
15 **COUNTY IN WHICH THE CHILD OR ADULT RESIDES IS A PARTY TO OR OTHERWISE**
16 **PARTICIPATES IN THE PROCESS.**

17 **(C) THERE IS NO PRIVILEGE UNDER § 3-1815 OF THIS SUBTITLE IF A**
18 **TRIBUNAL FINDS, AFTER A HEARING IN CAMERA, THAT THE PARTY SEEKING**
19 **DISCOVERY OR THE PROPONENT OF THE EVIDENCE HAS SHOWN THE EVIDENCE**
20 **IS NOT OTHERWISE AVAILABLE, THE NEED FOR THE EVIDENCE SUBSTANTIALLY**
21 **OUTWEIGHS THE INTEREST IN PROTECTING CONFIDENTIALITY, AND THE**
22 **COLLABORATIVE LAW COMMUNICATION IS SOUGHT OR OFFERED IN:**

23 **(1) A COURT PROCEEDING INVOLVING A FELONY OR**
24 **MISDEMEANOR; OR**

25 **(2) A PROCEEDING SEEKING RESCISSION OR REFORMATION OF A**
26 **CONTRACT ARISING OUT OF THE COLLABORATIVE LAW PROCESS OR IN WHICH A**
27 **DEFENSE TO AVOID LIABILITY ON THE CONTRACT IS ASSERTED.**

28 **(D) IF A COLLABORATIVE LAW COMMUNICATION IS SUBJECT TO AN**
29 **EXCEPTION UNDER SUBSECTION (B) OR (C) OF THIS SECTION, ONLY THE PART**
30 **OF THE COMMUNICATION NECESSARY FOR THE APPLICATION OF THE**
31 **EXCEPTION MAY BE DISCLOSED OR ADMITTED.**

32 **(E) DISCLOSURE OR ADMISSION OF EVIDENCE EXCEPTED FROM THE**
33 **PRIVILEGE UNDER SUBSECTION (B) OR (C) OF THIS SECTION DOES NOT MAKE**

1 THE EVIDENCE OR ANY OTHER COLLABORATIVE LAW COMMUNICATION
2 DISCOVERABLE OR ADMISSIBLE FOR ANY OTHER PURPOSE.

3 (F) (1) THE PRIVILEGES UNDER § 3-1815 OF THIS SUBTITLE DO NOT
4 APPLY IF THE PARTIES AGREE IN ADVANCE IN A SIGNED RECORD, OR IF A
5 RECORD OF A PROCEEDING REFLECTS AGREEMENT BY THE PARTIES, THAT ALL
6 OR PART OF A COLLABORATIVE LAW PROCESS IS NOT PRIVILEGED.

7 (2) THIS SUBSECTION DOES NOT APPLY TO A COLLABORATIVE
8 LAW COMMUNICATION MADE BY A PERSON THAT DID NOT RECEIVE ACTUAL
9 NOTICE OF THE AGREEMENT BEFORE THE COMMUNICATION WAS MADE.

10 **3-1818. AUTHORITY OF TRIBUNAL IN CASE OF NONCOMPLIANCE.**

11 (A) NOTWITHSTANDING THE FAILURE OF AN AGREEMENT TO MEET THE
12 REQUIREMENTS OF § 3-1802 OF THIS SUBTITLE, OR THE FAILURE OF A LAWYER
13 TO COMPLY WITH § 3-1812 OR § 3-1813 OF THIS SUBTITLE, A TRIBUNAL MAY
14 FIND THAT THE PARTIES INTENDED TO ENTER INTO A COLLABORATIVE LAW
15 PARTICIPATION AGREEMENT IF THE PARTIES:

16 (1) SIGNED A RECORD INDICATING AN INTENTION TO ENTER INTO
17 A COLLABORATIVE LAW PARTICIPATION AGREEMENT; AND

18 (2) REASONABLY BELIEVED THEY WERE PARTICIPATING IN A
19 COLLABORATIVE LAW PROCESS.

20 (B) IF A TRIBUNAL MAKES THE FINDINGS SPECIFIED IN SUBSECTION (A)
21 OF THIS SECTION, AND THE INTERESTS OF JUSTICE REQUIRE, THE TRIBUNAL
22 MAY:

23 (1) ENFORCE AN AGREEMENT EVIDENCED BY A RECORD
24 RESULTING FROM THE PROCESS IN WHICH THE PARTIES PARTICIPATED;

25 (2) APPLY THE DISQUALIFICATION PROVISIONS OF §§ 3-1803,
26 3-1804, 3-1807, 3-1808, AND 3-1809 OF THIS SUBTITLE; AND

27 (3) APPLY THE PRIVILEGES UNDER § 3-1815 OF THIS SUBTITLE.

28 **3-1819. UNIFORMITY OF APPLICATION AND CONSTRUCTION.**

29 IN APPLYING AND CONSTRUING THIS UNIFORM ACT, CONSIDERATION
30 SHALL BE GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH
31 RESPECT TO ITS SUBJECT MATTER AMONG STATES THAT ENACT IT.

1 **3-1820. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL**
2 **COMMERCE ACT.**

3 **THIS SUBTITLE MODIFIES, LIMITS, AND SUPERSEDES THE FEDERAL**
4 **ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT, 15**
5 **U.S.C.A. § 7001 ET SEQ., BUT DOES NOT MODIFY, LIMIT, OR SUPERSEDE §**
6 **101(C) OF THAT ACT, 15 U.S.C.A. § 7001(C), OR AUTHORIZE ELECTRONIC**
7 **DELIVERY OF ANY OF THE NOTICES DESCRIBED IN § 103(B) OF THAT ACT, 15**
8 **U.S.C.A. § 7003(B).**

9 **3-1821. SHORT TITLE.**

10 **THIS SUBTITLE MAY BE CITED AS THE MARYLAND UNIFORM**
11 **COLLABORATIVE LAW ACT.**

12 SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this
13 Act or the application thereof to any person or circumstance is held invalid for any
14 reason in a court of competent jurisdiction, the invalidity does not affect other
15 provisions or any other application of this Act which can be given effect without the
16 invalid provision or application, and for this purpose the provisions of this Act are
17 declared severable.

18 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall apply to a
19 collaborative law participation agreement that meets the requirements of § 3-1802 of
20 the Courts Article, as enacted by Section 1 of this Act, on or after the effective date of
21 this Act.

22 SECTION 4. AND BE IT FURTHER ENACTED, That the catchlines or
23 captions contained in this Act are not law and may not be considered to have been
24 enacted as a part of this Act.

25 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 October 1, 2012.